

**CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1264**

Citations Affected: IC 9-14-3-7; IC 9-24-15-6.5; IC 9-30; IC 12-23-5-5; IC 12-23-5-5.5; IC 35-48-4-15.

Synopsis: Ignition interlock devices and operating while intoxicated. Makes tampering with an ignition interlock device a Class B misdemeanor under certain circumstances. Requires a court in a county having an ignition interlock program to prohibit certain OWI offenders from operating a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device. Provides that a court may order installation of an ignition interlock device as: (1) a condition of certain deferred prosecution programs; (2) an alternative to an administrative driver's license suspension; and (3) a condition of participation in a post-conviction alcohol abuse deterrent program. Requires a court that orders installation of an ignition interlock device to notify the bureau of motor vehicles (BMV), and requires the BMV to record this requirement in the person's driving record. Provides that certain out of state convictions may be used as a basis to enhance the penalty for OWI causing serious bodily injury and OWI causing death. **(This conference committee report: (1) removes the contents of SB 154 regarding increased penalties and enhanced license suspensions for operating a motor vehicle while intoxicated; and (2) requires an ignition interlock device as a condition of a probationary license for certain OWI offenders.)**

Effective: July 1, 2004.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1264 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 9-14-3-7, AS AMENDED BY P.L.112-2001,
- 3 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2004]: Sec. 7. (a) The bureau shall maintain an operating
- 5 record for each person licensed by the bureau to drive a motor vehicle.
- 6 (b) An operating record must contain the following:
- 7 (1) A person's convictions for any of the following:
- 8 (A) A moving traffic violation.
- 9 (B) Operating a vehicle without financial responsibility in violation
- 10 of IC 9-25.
- 11 (2) Any administrative penalty imposed by the bureau.
- 12 (3) If the driving privileges of a person have been suspended or
- 13 revoked by the bureau, an entry in the record stating that a notice
- 14 of suspension or revocation was mailed by the bureau and the date
- 15 of the mailing of the notice.
- 16 (4) Any suspensions, revocations, or reinstatements of a person's
- 17 driving privileges, license, or permit.
- 18 **(5) Any requirement that the person may operate only a**

motor vehicle equipped with an certified ignition interlock device.

(c) An entry in the operating record of a defendant stating that notice of suspension or revocation was mailed by the bureau to the defendant constitutes prima facie evidence that the notice was mailed to the defendant's address as shown in the official driving record.

(d) An operating record maintained under this section:

(1) is not admissible as evidence in any action for damages arising out of a motor vehicle accident; and

(2) may not include voter registration information.

SECTION 2. IC 9-24-15-6.5, AS AMENDED BY P.L.215-2001, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6.5. (a) The court shall grant a petition for a restricted driving permit filed under this chapter if all of the following conditions exist:

(1) The person was not convicted of one (1) or more of the following:

(A) A Class D felony under IC 9-30-5-4 before July 1, 1996, or a Class D felony or a Class C felony under IC 9-30-5-4 after June 30, 1996.

(B) A Class C felony under IC 9-30-5-5 before July 1, 1996, or a Class C felony or a Class B felony under IC 9-30-5-5 after June 30, 1996.

(2) The person's driving privileges were suspended under IC 9-30-6-9(b) or IC 35-48-4-15.

(3) The driving that was the basis of the suspension was not in connection with the person's work.

(4) The person does not have a previous conviction for operating while intoxicated.

(5) The person is participating in a rehabilitation program certified by either the division of mental health and addiction or the Indiana judicial center as a condition of the person's probation.

(b) The person filing the petition for a restricted driving permit shall include in the petition the information specified in subsection (a) in addition to the information required by sections 3 through 4 of this chapter.

(c) Whenever the court grants a person restricted driving privileges under this chapter, that part of the court's order granting probationary driving privileges shall not take effect until the person's driving privileges have been suspended for at least thirty (30) days under IC 9-30-6-9. **In a county that provides for the installation of an ignition interlock device under IC 9-30-8, installation of an ignition interlock device is required as a condition of probationary driving privileges for the entire duration of the probationary driving privileges.**

(d) **If a court requires installation of a certified ignition interlock device under subsection (c), the court shall order the bureau to record this requirement in the person's operating record in accordance with IC 9-14-3-7. When the person is no**

1 **longer required to operate only a motor vehicle equipped with an**
 2 **ignition interlock device, the court shall notify the bureau that**
 3 **the ignition interlock use requirement has expired and order the**
 4 **bureau to update its records accordingly.**

5 SECTION 3. IC 9-30-5-4, AS AMENDED BY P.L.175-2001,
 6 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2004]: Sec. 4. (a) A person who causes serious bodily injury
 8 to another person when operating a motor vehicle:

9 (1) with an alcohol concentration equivalent to at least
 10 eight-hundredths (0.08) gram of alcohol per:

11 (A) one hundred (100) milliliters of the person's blood; or

12 (B) two hundred ten (210) liters of the person's breath;

13 (2) with a controlled substance listed in schedule I or II of
 14 IC 35-48-2 or its metabolite in the person's body; or

15 (3) while intoxicated;

16 commits a Class D felony. However, the offense is a Class C felony if
 17 **the person has a previous conviction of operating while intoxicated**
 18 **within the five (5) years preceding the commission of the offense. ~~the~~**
 19 **~~person had a prior unrelated conviction under this chapter.~~**

20 (b) A person who violates subsection (a) commits a separate offense
 21 for each person whose serious bodily injury is caused by the violation
 22 of subsection (a).

23 (c) It is a defense under subsection (a)(2) that the accused person
 24 consumed the controlled substance under a valid prescription or order
 25 of a practitioner (as defined in IC 35-48-1) who acted in the course of
 26 the practitioner's professional practice.

27 SECTION 4. IC 9-30-5-5, AS AMENDED BY HEA 1394-2004,
 28 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2004]: Sec. 5. (a) A person who causes the death of another
 30 person when operating a motor vehicle:

31 (1) with an alcohol concentration equivalent to at least
 32 eight-hundredths (0.08) gram of alcohol ~~but less than~~
 33 ~~fifteen-hundredths (0.15) gram of alcohol~~ per:

34 (A) one hundred (100) milliliters of the person's blood; or

35 (B) two hundred ten (210) liters of the person's breath;

36 (2) with a controlled substance listed in schedule I or II of
 37 IC 35-48-2 or its metabolite in the person's blood; or

38 (3) while intoxicated;

39 commits a Class C felony. However, the offense is a Class B felony if
 40 **the person has a previous conviction of operating while intoxicated**
 41 **within the five (5) years preceding the commission of the offense, ~~the~~**
 42 **~~person had a prior unrelated conviction under this chapter,~~ or if the**
 43 **person ~~knowingly~~ operated the motor vehicle ~~with a~~ when the person**
 44 **knew that the person's driver's license, ~~that was~~ driving privilege,**
 45 **or permit is suspended or revoked for a previous conviction for**
 46 **operating a vehicle while intoxicated. ~~under IC 9-30-5.~~**

47 (b) A person at least twenty-one (21) years of age who causes the
 48 death of another person when operating a motor vehicle:

49 (1) with an alcohol concentration equivalent to at least

1 fifteen-hundredths (0.15) gram of alcohol per:

2 (A) one hundred (100) milliliters of the person's blood; or

3 (B) two hundred ten (210) liters of the person's breath; or

4 (2) with a controlled substance listed in schedule I or II of
5 IC 35-48-4 or its metabolite in the person's blood;

6 commits a Class B felony.

7 (c) A person who violates subsection (a) or (b) commits a separate
8 offense for each person whose death is caused by the violation of
9 subsection (a) or (b).

10 (d) It is a defense under subsection (a)(2) or subsection (b)(2) that
11 the accused person consumed the controlled substance under a valid
12 prescription or order of a practitioner (as defined in IC 35-48-1) who
13 acted in the course of the practitioner's professional practice.

14 SECTION 5. IC 9-30-5-8 IS AMENDED TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) A person who **knowingly or**
16 **intentionally** tampers with an ignition interlock device for the purpose
17 of:

18 (1) circumventing the ignition interlock device; or

19 (2) rendering the ignition interlock device inaccurate or inoperative;

20 commits a Class B ~~infraction~~ **misdemeanor**.

21 (b) A person who solicits another person to:

22 (1) blow into an ignition interlock device; or

23 (2) start a motor vehicle equipped with an ignition interlock device;
24 for the purpose of providing an operable vehicle to a person who is
25 restricted to driving a vehicle with the ignition interlock device commits
26 a Class C infraction.

27 SECTION 6. IC 9-30-5-10 IS AMENDED TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) In addition to a criminal
29 penalty imposed for an offense under this chapter or IC 14-15-8, the
30 court shall, after reviewing the person's bureau driving record and other
31 relevant evidence, recommend the suspension of the person's driving
32 privileges for the fixed period of time specified under this section.

33 (b) If the court finds that the person:

34 (1) does not have a previous conviction of operating a vehicle or a
35 motorboat while intoxicated; or

36 (2) has a previous conviction of operating a vehicle or a motorboat
37 while intoxicated that occurred at least ten (10) years before the
38 conviction under consideration by the court;

39 the court shall recommend the suspension of the person's driving
40 privileges for at least ninety (90) days but not more than two (2) years.

41 (c) If the court finds that the person has a previous conviction of
42 operating a vehicle or a motorboat while intoxicated and the previous
43 conviction occurred more than five (5) years but less than ten (10)
44 years before the conviction under consideration by the court, the court
45 shall recommend the suspension of the person's driving privileges for
46 at least one hundred eighty (180) days but not more than two (2) years.
47 The court may stay the execution of that part of the suspension that
48 exceeds the minimum period of suspension and grant the person
49 probationary driving privileges for a period of time equal to the length
50 of the stay. ~~If the court grants probationary driving privileges under this~~

~~subsection; the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.~~

(d) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. ~~If the court grants probationary driving privileges under this subsection; the court may order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.~~

(e) If the conviction under consideration by the court is for an offense under:

- (1) section 4 of this chapter;
- (2) section 5 of this chapter;
- (3) IC 14-15-8-8(b); or
- (4) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

(f) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, **in which a vehicle was used in the offense**, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

SECTION 7. IC 9-30-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. (a) An order for probationary driving privileges granted under ~~section 12 of~~ this chapter must include the following:

- (1) A requirement that the person may not violate a traffic law.
- (2) A restriction of a person's driving privileges providing for automatic execution of the suspension of driving privileges if an order is issued under subsection (b).
- (3) A written finding by the court that the court has reviewed the person's driving record and other relevant evidence and found that the person qualifies for a probationary license under ~~section 12 of~~ this chapter.
- (4) Other reasonable terms of probation.

(b) If the court finds that the person has violated the terms of the order granting probationary driving privileges, the court shall order execution of that part of the sentence concerning the suspension of the person's driving privileges.

SECTION 8. IC 9-30-5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) Except as provided in ~~subsection~~ **subsections (b) and (c)**, the court may, in granting

probationary driving privileges under this chapter, also order that the probationary driving privileges include the requirement that a person may not operate a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(b) An order granting probationary driving privileges:

(1) under:

(A) section 12(a) of this chapter, if the person has a previous conviction that occurred at least ten (10) years before the conviction under consideration by the court; or

(B) section 12(c) of this chapter; or

(2) to a person who has a prior unrelated conviction for an offense under this chapter of which the consumption of alcohol is an element;

must prohibit the person from operating a motor vehicle unless the vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. However, a court is not required to order the installation of an ignition interlock device for a person described in subdivision (1) or (2) if the person is successfully participating in a court supervised alcohol treatment program in which the person is taking disulfiram or a similar substance that the court determines is effective in treating alcohol abuse.

(c) A court may not order the installation of an ignition interlock device on a vehicle operated by an employee to whom any of the following apply:

(1) Has been convicted of violating ~~IC 9-30-5-1 or IC 9-30-5-2:~~ section 1 or 2 of this chapter.

(2) Is employed as the operator of a vehicle owned, leased, or provided by the employee's employer.

(3) Is subject to a labor agreement that prohibits an employee who is convicted of an alcohol related offense from operating the employer's vehicle.

SECTION 9. IC 9-30-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) Whenever a judicial officer has determined that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, the clerk of the court shall forward:

(1) a copy of the affidavit; and

(2) a bureau certificate as described in section 16 of this chapter; to the bureau.

(b) The probable cause affidavit required under section 7(b)(2) of this chapter must do the following:

(1) Set forth the grounds for the arresting officer's belief that there was probable cause that the arrested person was operating a vehicle in violation of IC 9-30-5 or a motorboat in violation of IC 14-15-8.

(2) State that the person was arrested for a violation of IC 9-30-5 or operating a motorboat in violation of IC 14-15-8.

(3) State whether the person:

(A) refused to submit to a chemical test when offered; or

(B) submitted to a chemical test that resulted in prima facie evidence that the person was intoxicated.

(4) Be sworn to by the arresting officer.

(c) **Except as provided in subsection (d)**, if it is determined under subsection (a) that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, at the initial hearing of the matter held under IC 35-33-7-1:

(1) the court shall recommend immediate suspension of the person's driving privileges to take effect on the date the order is entered;

(2) the court shall order the person to surrender all driver's licenses, permits, and receipts; and

(3) the clerk shall forward the following to the bureau:

(A) The person's license or permit surrendered under this section or section 3 or 7 of this chapter.

(B) A copy of the order recommending immediate suspension of driving privileges.

(d) If it is determined under subsection (a) that there is probable cause to believe that a person violated IC 9-30-5, the court may, as an alternative to a license suspension under subsection (c)(1), issue an order recommending that the person be prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 until the bureau is notified by a court that the criminal charges against the person have been resolved.

SECTION 10. IC 9-30-6-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 8.5. (a) If the bureau receives an order recommending use of an ignition interlock device under section 8(d) of this chapter, the bureau shall immediately do the following:**

(1) Mail a notice to the person's last known address stating that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8 commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending use of an ignition interlock device;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

(b) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this section is not subject to any administrative adjudication under IC 4-21.5.

SECTION 11. IC 9-30-6-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 8.7. (a) A person commits a Class B infraction if the person:**

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 8(d) of this chapter.

(b) A person commits a Class B misdemeanor if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 8(d) of this chapter.

SECTION 12. IC 9-30-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) **This section does not apply if an ignition interlock device order is issued under section 8(d) of this chapter.**

(b) If the affidavit under section 8(b) of this chapter states that a person refused to submit to a chemical test, the bureau shall suspend the driving privileges of the person:

(1) for one (1) year; or

(2) until the suspension is ordered terminated under IC 9-30-5.

~~(b)~~ (c) If the affidavit under section 8(b) of this chapter states that a chemical test resulted in prima facie evidence that a person was intoxicated, the bureau shall suspend the driving privileges of the person:

(1) for one hundred eighty (180) days; or

(2) until the bureau is notified by a court that the charges have been disposed of;

whichever occurs first.

~~(c)~~ (d) Whenever the bureau is required to suspend a person's driving privileges under this section, the bureau shall immediately do the following:

(1) Mail a notice to the person's last known address that must state that the person's driving privileges will be suspended for a specified period, commencing:

(A) five (5) days after the date of the notice; or

(B) on the date the court enters an order recommending suspension of the person's driving privileges under section 8(c) of this chapter;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

~~(d)~~ (e) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this article is not subject to any administrative adjudication under IC 4-21.5.

~~(e)~~ (f) If a person is granted probationary driving privileges under IC 9-30-5 and the bureau has not received the probable cause affidavit described in section 8(b) of this chapter, the bureau shall suspend the person's driving privileges for a period of thirty (30) days. After the

thirty (30) day period has elapsed, the bureau shall, upon receiving a reinstatement fee from the person who was granted probationary driving privileges, issue the probationary license if the person otherwise qualifies for a license.

(g) If the bureau receives an order granting probationary driving privileges to a person who has a prior conviction for operating while intoxicated, the bureau shall do the following:

- (1) Issue the person a probationary license and notify the prosecuting attorney of the county from which the order was received that the person is not eligible for a probationary license.
- (2) Send a certified copy of the person's driving record to the prosecuting attorney.

The prosecuting attorney shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order. If the bureau does not receive a corrected order within sixty (60) days, the bureau shall notify the attorney general, who shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order.

SECTION 13. IC 9-30-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9 of this chapter is entitled to a prompt judicial hearing. The person may file a petition that requests a hearing:

- (1) in the court where the charges with respect to the person's operation of a vehicle are pending; or
- (2) if charges with respect to the person's operation of a vehicle have not been filed, in any court of the county where the alleged offense or refusal occurred that has jurisdiction over crimes committed in violation of IC 9-30-5.

(b) The petition for review must:

- (1) be in writing;
- (2) be verified by the person seeking review; and
- (3) allege specific facts that contradict the facts alleged in the probable cause affidavit.

(c) The hearing under this section shall be limited to the following issues:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was operating a vehicle in violation of IC 9-30-5.
- (2) Whether the person refused to submit to a chemical test offered by a law enforcement officer.

(d) If the court finds:

- (1) that there was no probable cause; or
- (2) that the person's driving privileges were suspended under section 9(a) of this chapter and that the person did not refuse to submit to a chemical test;

the court shall order the bureau to **rescind the ignition interlock device requirement or** reinstate the person's driving privileges.

(e) The prosecuting attorney of the county in which a petition has been filed under this chapter shall represent the state on relation of the

bureau with respect to the petition.

(f) The petitioner has the burden of proof by a preponderance of the evidence.

(g) The court's order is a final judgment appealable in the manner of civil actions by either party. The attorney general shall represent the state on relation of the bureau with respect to the appeal.

SECTION 14. IC 9-30-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) Notwithstanding any other provision of this chapter, IC 9-30-5, or IC 9-30-9, the court shall order the bureau to **rescind an ignition interlock device requirement or** reinstate the driving privileges of a person if:

(1) all of the charges under IC 9-30-5 have been dismissed and the prosecuting attorney states on the record that no charges will be refiled against the person;

(2) the court finds the allegations in a petition filed by a defendant under section 18 of this chapter are true; or

(3) the person:

(A) did not refuse to submit to a chemical test offered as a result of a law enforcement officer having probable cause to believe the person committed the offense charged; and

(B) has been found not guilty of all charges by a court or by a jury.

(b) The court's order must contain findings of fact establishing that the requirements for reinstatement described in subsection (a) have been met.

(c) A person whose driving privileges are reinstated under this section is not required to pay a reinstatement fee.

SECTION 15. IC 9-30-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. If a court orders the bureau to **rescind an ignition interlock device requirement or** reinstate a person's driving privileges under this article, the bureau shall comply with the order. Unless the order for reinstatement is issued under section 11(2) of this chapter, the bureau shall also do the following:

(1) Remove any record of the **ignition interlock device requirement or** suspension from the bureau's recordkeeping system.

(2) Reinstate the privileges without cost to the person.

SECTION 16. IC 9-30-6-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) A person **against whom an ignition interlock device order has been issued under section 8.5 of this chapter or** whose driving privileges have been suspended under section 9(b) of this chapter is entitled to **rescission of the ignition interlock device requirement or** reinstatement of driving privileges if the following occur:

(1) After a request for an early trial is made by the person at the initial hearing on the charges, a trial or other disposition of the charges for which the person was arrested under IC 9-30-5 is not held within ninety (90) days after the date of the person's initial

1 hearing on the charges.

2 (2) The delay in trial or disposition of the charges is not due to the
3 person arrested under IC 9-30-5.

4 (b) A person who desires **rescission of the ignition interlock**
5 **device requirement or** reinstatement of driving privileges under this
6 section must file a verified petition in the court where the charges
7 against the petitioner are pending. The petition must allege the following:

8 (1) The date of the petitioner's arrest under IC 9-30-5.

9 (2) The date of the petitioner's initial hearing on the charges filed
10 against the petitioner under IC 9-30-5.

11 (3) The date set for trial or other disposition of the matter.

12 (4) A statement averring the following:

13 (A) That the petitioner requested an early trial of the matter at the
14 petitioner's initial hearing on the charges filed against the
15 petitioner under IC 9-30-5.

16 (B) The trial or disposition date set by the court is at least ninety
17 (90) days after the date of the petitioner's initial hearing on the
18 charges filed against the petitioner under IC 9-30-5.

19 (C) The delay in the trial or disposition is not due to the
20 petitioner.

21 (c) Upon the filing of a petition under this section, the court shall
22 immediately examine the record of the court to determine whether the
23 allegations in the petition are true.

24 (d) If the court finds the allegations of a petition filed under this
25 section are true, the court shall order **rescission of the ignition**
26 **interlock device requirement or** reinstatement of the petitioner's
27 driving privileges under section 11 of this chapter. The reinstatement
28 must not take effect until ninety (90) days after the date of the
29 petitioner's initial hearing.

30 SECTION 17. IC 9-30-8-1 IS AMENDED TO READ AS FOLLOWS
31 [EFFECTIVE JULY 1, 2004]: Sec. 1. If a court orders the installation
32 of a certified ignition interlock device under ~~IC 9-30-5-16~~ **IC 9-30-5** on
33 a motor vehicle that a person whose license is restricted owns or
34 expects to operate, the court shall set the time that the installation must
35 remain in effect. However, the term may not exceed the maximum term
36 of imprisonment the court could have imposed. The person shall pay
37 the cost of installation.

38 SECTION 18. IC 9-30-9-5 IS AMENDED TO READ AS FOLLOWS
39 [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) If the court enters an order
40 conditionally deferring charges under section 3 of this chapter, the
41 court may do the following:

42 (1) Suspend the person's driving privileges for at least two (2)
43 years but not more than four (4) years.

44 (2) Impose other appropriate conditions, including the payment of
45 fees imposed under section 8 of this chapter.

46 (b) Notwithstanding IC 9-30-6-9, the defendant may be granted
47 probationary driving privileges only after the defendant's license has
48 been suspended for at least one (1) year.

49 (c) **The court may, as an alternative to a license suspension**

1 under subsection (a)(1), issue an order prohibiting the defendant
 2 from operating a motor vehicle unless the motor vehicle is
 3 equipped with a functioning certified ignition interlock device
 4 under IC 9-30-8. An order requiring an ignition interlock device
 5 must remain in effect for at least two (2) years but not more than
 6 four (4) years.

7 SECTION 19. IC 9-30-9-7 IS AMENDED TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) If the court refers a defendant
 9 to the program under section 6 of this chapter, the court may do the
 10 following:

11 (1) Suspend the defendant's driving privileges for at least ninety
 12 (90) days but not more than four (4) years.

13 (2) Impose other appropriate conditions.

14 (b) The defendant may be granted probationary driving privileges only
 15 after the defendant's license has been suspended for at least thirty (30)
 16 days under IC 9-30-6-9.

17 (c) The court may, as an alternative to a license suspension
 18 under subsection (a)(1), issue an order prohibiting the defendant
 19 from operating a motor vehicle unless the motor vehicle is
 20 equipped with a functioning certified ignition interlock device
 21 under IC 9-30-8. An order requiring an ignition interlock device
 22 must remain in effect for at least two (2) years but not more than
 23 four (4) years.

24 SECTION 20. IC 9-30-9-7.5 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 26 1, 2004]: Sec. 7.5. (a) A person commits a Class B infraction if the
 27 person:

28 (1) operates a motor vehicle without a functioning certified
 29 ignition interlock device; and

30 (2) is prohibited from operating a motor vehicle unless the
 31 motor vehicle is equipped with a functioning certified ignition
 32 interlock device under section 5(d) or 7(d) of this chapter.

33 (b) A person commits a Class B misdemeanor if the person:

34 (1) operates a motor vehicle without a functioning certified
 35 ignition interlock device; and

36 (2) knows the person is prohibited from operating a motor
 37 vehicle unless the motor vehicle is equipped with a functioning
 38 certified ignition interlock device under section 5(d) or 7(d) of
 39 this chapter.

40 SECTION 21. IC 12-23-5-5 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) Subject to
 42 subsection (b), if a court enters an order conditionally deferring charges
 43 that involve a violation of IC 9-30-5, the court shall do the following:

44 (1) Suspend the defendant's driving privileges for at least ninety
 45 (90) days but not more than two (2) years.

46 (2) Impose other appropriate conditions.

47 (b) A defendant may be granted probationary driving privileges only
 48 after the defendant's license has been suspended for at least thirty (30)

days under IC 9-30-6-9.

(c) If a defendant has at least one (1) conviction for an offense under IC 9-30-5, the order granting probationary driving privileges under subsection (b) must, in a county that provides for the installation of an ignition interlock device under IC 9-30-8, prohibit the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8.

(d) If a defendant does not have a prior conviction for an offense under IC 9-30-5, the court may, as an alternative to a license suspension under subsection (a)(1), issue an order prohibiting the defendant from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. An order requiring an ignition interlock device must remain in effect for at least two (2) years but not more than four (4) years.

SECTION 22. IC 12-23-5-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5.5. (a) A person commits a Class B infraction if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) of this chapter.

(b) A person commits a Class B misdemeanor if the person:

(1) operates a motor vehicle without a functioning certified ignition interlock device; and

(2) knows the person is prohibited from operating a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under section 5(d) of this chapter.

SECTION 23. IC 35-48-4-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) If a person is convicted of an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, or conspiracy to commit an offense under section 1, 2, 3, 4, 5, 6, 7, 10, or 11 of this chapter, **and the court finds that a motor vehicle was used in the commission of the offense**, the court shall, in addition to any other order the court enters, order that the person's:

(1) operator's license be suspended;

(2) existing motor vehicle registrations be suspended; and

(3) ability to register motor vehicles be suspended;

by the bureau of motor vehicles for a period specified by the court of at least six (6) months but not more than two (2) years.

(b) If a person is convicted of an offense described in subsection (a) and the person does not hold an operator's license or a learner's permit, the court shall order that the person may not receive an operator's license or a learner's permit from the bureau of motor vehicles for a

- 1 period of not less than six (6) months.
(Reference is to EHB 1264 as reprinted February 26, 2004.)

Conference Committee Report
on
Engrossed House Bill 1264

Signed by:

Representative Dvorak
Chairperson

Senator Wyss

Representative Duncan

Senator Broden

House Conferees

Senate Conferees